U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: OCT 21 2013 Office: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. According to Part 6 of the Form I-140, the petitioner seeks employment as an "Elementary Science Teacher" for [redacted] The petitioner worked at [redacted] Maryland from 2008 – 2011. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The record reflects that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990) (IMMACT90), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (NYSDOT), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The petitioner has established that her work as an elementary school teacher is in an area of substantial intrinsic merit. It remains, then, to determine whether the proposed benefits of the petitioner's work will be national in scope and whether she will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. Assertions regarding the overall importance of an alien's area of expertise cannot suffice to establish eligibility for a national interest waiver. *NYSDOT* at 220. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

The petitioner filed the Form I-140 petition on February 13, 2012. In a February 8, 2012 letter accompanying the petition, counsel stated that the petitioner's national interest waiver is "based on her Bachelor of Science degree in Elementary Education with Professional Education Courses Certificate from reputable universities in the Philippines including almost twenty (20) years of solid dedicated professional teaching experience which is equivalent to a Master's Degree from a regionally-accredited institution of higher education in the United States of America." Academic records and experience are elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A) and (B), respectively. Exceptional ability, in turn, is not self-evident grounds for the waiver. *See* section 203(b)(2)(A) of the Act. The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in her field of expertise.

Counsel further stated: "But for the unfortunate incident that happened to [the petitioner] would naturally continue the joy and greater honor of teaching her students in Maryland." Counsel refers to the debarment provisions of section 212(n)(2)(C)(i) of the Act invoked by the U.S. Department of Labor against owing to certain immigration violations by that employer. As a result, between March 16, 2012 and March 15, 2014, USCIS cannot approve any employment-based immigrant or nonimmigrant petitions filed by [1] This debarment means that is, temporarily, unable to file its own petition on the alien's behalf for a classification other than the one for which she was already approved, and thus explains why labor certification is not an option in the short term. The inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that she will serve the national interest to a substantially greater degree than do others in the same field. *NYSDOT* at 218, n.5. Any waiver must rest on the petitioner's individual qualifications, rather than on the circumstances that (temporarily) prevent from filing a petition on her behalf.

In his letter accompanying the petition, counsel did not mention the *NYSDOT* guidelines or explain how the petitioner meets them. The record does not show how the petitioner's work will impact the field beyond With regard to the petitioner's teaching duties, there is no evidence establishing that the benefits of her work would extend beyond her elementary school students such that they will have a national impact. *NYSDOT* provides examples of employment where the benefits would not be national in scope:

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[1] The list of debarred and disqualified employers is available on the U.S. Department of Labor's website. *See* http://www.dol.gov/whd/immigration/H1BDebarment.htm, accessed on September 30, 2013, copy incorporated into the record of proceeding.

> For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id. at 217, n.3. In the present matter, the petitioner has not shown the benefits of her impact as an elementary school teacher beyond the students at her school and, therefore, that her proposed benefits are national in scope. In addition, the record lacks specific examples of how the petitioner's work as a teacher has influenced the education field on a national level. At issue is whether this petitioner's contributions in the field are of such significance that she merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification she seeks. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

The petitioner submitted various letters of support from administrators, teachers, and parents discussing her work as an educator. As some of the letters contain similar claims addressed in other letters, not every letter will be quoted. Instead, only selected examples will be discussed to illustrate the nature of the references' claims.

Gloria McCoy, Principal, Glenridge Elementary School, stated:

> I am writing on behalf of [the petitioner], a former fifth grade teacher at . I had the pleasure of being [the petitioner's] principal for three years. She successfully taught students with diverse backgrounds and abilities.
>
> [The petitioner] did an excellent job of preparing students for the challenges that they may face. She thoroughly planned her lessons and taught them in an imaginative manner. Her classroom was an inviting learning environment where she facilitated student growth. Throughout the years, her students exhibited gains in reading and in mathematics, scoring proficient and advanced on assessments.
>
> Through her quiet, but determined demeanor, [the petitioner] maintained excellent classroom management while still giving her students the opportunity to be creative. She was well-respected by staff, students, and parents.

Ms. comments on the petitioner's effectiveness as a teacher, but does not indicate that the petitioner's work has had, or will continue to have, an impact beyond the students under her tutelage and the local school system that employed her.

Mathematics Coordinator, stated:

> I have known [the petitioner] since October 2009. As the Mathematics Coordinator, I was able to work closely with her and grew to know her both personally and professionally.
>
> [The petitioner] joined after the school year began. . . . [The petitioner] took over a class of students and taught Reading/Language Arts and Math. In addition she taught Science to the entire grade level of approximately ninety students.
>
> Although [the petitioner] was new to the staff, it was as if she had been a member of the staff for several years. She displayed a tremendous amount of professionalism, patience, enthusiasm, dedication, and focus. She was determined to make the students feel comfortable with their adjustment to a new teacher.
>
> [The petitioner] participated in our Reading Together Afterschool Program and also in the Extended Learning Opportunity Program in Reading and Math. . . . She worked hard to make sure her students were successful and committed to learning. She maintained high expectations for all of her students throughout the school year.
>
> [The petitioner] was very well liked by students, staff and families and always willing to provide assistance or volunteer. She was also interested in ways to further her professional development and stay abreast of new strategies, trends in education, and ideas.

Ms. comments on the petitioner's personal qualities, professionalism, and activities as a teacher at but she does not indicate how the petitioner's impact or influence as an educator is national in scope. In addition, Ms. fails to provide specific examples of how the petitioner's work has influenced the field as a whole.

a parent whose child was taught by the petitioner at stated:

> I came to know [the petitioner] when my son was in 5th grade. She was his Math, Reading and Health teacher. His experience with her is remarkable and complete turn around in my son's academic performance. He was just proficient in Math and Reading in the Maryland Schools Assessment when he was in 3rd and 4th grade, but in 5th grade test he became advance in the MSA test. This is not because my son did an extra effort to achieve that, but because his teacher wants to make a difference in her student's lives. Her dedication and passion to let the students learn and become successful in their learning is evident inside her classroom. With [the petitioner's] guidance, patience and dedication in teaching; it paved the way to my son's interest in studying and loved [sic] for school.

Ms. speaks highly of the petitioner's teaching capabilities and asserts that the petitioner improved her son's academic performance. While Ms. 's comments indicate that the

petitioner works in an area of substantial intrinsic merit, her observations fail to demonstrate that the petitioner's work has influenced the field as whole, or that the petitioner has or will benefit the United States to a greater extent than other similarly qualified elementary school teachers.

The petitioner's references praise her teaching abilities and personal character, but they do not demonstrate that the petitioner's work has had an impact or influence outside of the schools where she has taught. They also do not address the *NYSDOT* guidelines which, as published precedent, are binding on all USCIS employees. *See* 8 C.F.R. § 103.3(c). That decision cited school teachers as an example of a profession in a field with overall national importance (education), but in which individual workers generally do not produce benefits that are national in scope. *NYSDOT* at 217, n.3.

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of the petitioner's references are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact").

In addition to the reference letters, the petitioner submitted the following:

1. A Maryland Educator Certificate;
2. A "Certification of Good Standing" from the
3. A Praxis Series test score report;
4. Degrees and academic transcripts;
5. Employment verifications;
6. A "Certificate of Appreciation" from the thanking the petitioner "for Dedication and Contributions of Leadership at the (November 19, 2010);

7. A Certificate of Excellence from the [redacted] "for sharing her expertise in Rigor in the Classroom" (January 28, 2012);
8. An "Outstanding Service" certificate from the [redacted] "for his/her invaluable contribution in giving academic help to the students of [redacted] in conjunction with its [redacted] 2011 – 2012";
9. A Certificate of Membership for the [redacted] and
10. A Maryland State Education Association membership card.

Again, academic records, occupational experience, professional certifications, membership in professional associations, and recognition for achievements are all elements that relate to a finding of exceptional ability, but exceptional ability is not sufficient to warrant the national interest waiver. The plain language of section 203(b)(2)(A) of the Act indicates that aliens of exceptional ability are subject to the job offer requirement (including alien employment certification). Particularly significant awards may serve as evidence of the petitioner's impact and influence on her field, but the petitioner has failed to demonstrate that the three awards she received (items 6 – 8) have more than local or institutional significance. There is no documentary evidence showing that items 1 – 10 are indicative of the petitioner's influence on the field of education at the national level.

The petitioner submitted copies of her "satisfactory" teacher evaluations from [redacted] The petitioner, however, failed to demonstrate how the evaluations reflect that she has impacted the field to a substantially greater degree than other similary qualified special education teachers and how her specific work has had significant impact outside of the schools where she has taught.

In addition, the petitioner submitted numerous certificates of participation and completion for training courses and seminars relating to her professional development. While taking courses and attending seminars are ways to increase one's professional knowledge and to improve as a teacher, there is nothing inherent in these activities to establish eligibility for the national interest waiver.

The director issued a request for evidence (RFE) on July 31, 2012, instructing the petitioner to submit evidence to establish that the benefits of her proposed employment "will impart national-level benefits" and that her "past record justifies projections of future benefit to the nation."

In response, the petitioner submitted "Maryland's Plan for Meeting the Highly Qualified Teacher Goal"; President George H.W. Bush's "Remarks on Signing the Immigration Act of 1990"; a 2009 article in the *Wall Street Journal* entitled "The Importance Math & Science in Education"; an article entitled "Importance of Science and Math Education"; the written testimony of Microsoft's Bill Gates before the Committee on Science and Technology of the United States House of Representatives (March 12, 2008); a statement by U.S. Secretary of Education Arne Duncan on the National Assessment of Educational Progress Reading and Math 2011 Results; information about STEM (science, technology, engineering and mathematics) fields printed from the online

encyclopedia *Wikipedia*; an article entitled "STEM Sell: Are Math and Science Really More Important Than Other Subjects?"; and an article discussing the highlights from the Trends in International Mathematics and Science Study (2007). As previously discussed, general arguments or information regarding the importance of a given field of endeavor, or the urgency of an issue facing the United States, cannot by themselves establish that an individual alien benefits the national interest by virtue of engaging in the field. *NYSDOT* at 217. Such assertions and information address only the "substantial intrinsic merit" prong of *NYSDOT*'s national interest test. None of the preceding documents demonstrate that the petitioner's specific work as a special educator has influenced the field as a whole.

The director denied the petition on February 27, 2013. The director found that the petitioner failed to establish that an exemption from the requirement of a job offer would be in the national interest of the United States. The director indicated that the petitioner had not shown that the benefits of her work as a public school teacher "will be national in scope." The director also determined that the petitioner had failed to demonstrate that she will serve the national interest to a greater extent than U.S. workers having the same minimum qualifications.

On appeal, counsel asserts that "USCIS erred in giving insufficient weight to the national educational interests enunciated in the No Child Left Behind Act 2001." Counsel notes that Congress passed the NCLBA three years after the issuance of NYSDOT as a precedent decision, and claims that "[t]he obscurity in the law that NYSDOT sought to address has been clarified," because "Congress has spelled out the national interest with respect to public elementary and secondary school education" through such legislation. In addition, counsel contends that "the NCLB Act and the Obama Education Programs, taken collectively, provide the underlying context for the adjudication of a national interest waiver application made in conjunction with an E21 visa petition for employment as a Highly Qualified Teacher in the public elementary school sector."

Counsel does not support the assertion that the NCLBA modified or superseded *NYSDOT*; that legislation did not amend section 203(b)(2) of the Act. Counsel identifies no specific legislative or regulatory provisions that exempt school teachers from *NYSDOT* or reduce its impact on them. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In contrast, section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub. L. 106-95 (November 12, 1999), specifically amended the Act by adding section 203(b)(2)(B)(ii) to create special waiver provisions for certain physicians. Because Congress not only can amend the Act to clarify the waiver provisions, but has in fact done so in direct response to *NYSDOT*, counsel has not shown that the NCLBA contains a similar legislative change.

Counsel further states:

> With respect to the E21 visa classification, INA § 203(b)(2)(A) provides in relevant part that: "Visas shall be made available . . . to qualified immigrants who are members of the professions

> holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the **national . . . educational interests**, . . . of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

Counsel, above, highlights the phrase "national . . . educational interests," but the very same quoted passage also includes the job offer requirement, *i.e.*, the requirement that the alien's "services . . . are sought by an employer in the United States." By the plain language of the statute that counsel quotes on appeal, an alien professional holding an advanced degree is presumptively subject to the job offer requirement, even if that alien "will substantially benefit prospectively the national . . . educational interests . . . of the United States." Again, neither the Act nor the NCLBA create or imply any blanket waiver for highly qualified foreign teachers. As members of the professions, teachers are included in the statutory clause at section 203(b)(2)(A) that includes the job offer requirement.

Counsel asserts that the director "erred in disregarding evidence demonstrating the national scope of the petitioner's proposed benefit through her effective role in serving the national educational interest of closing the achievement gap." The record, however, contains no evidence that the petitioner's efforts have significantly closed that gap in or nationally. The national importance of "education" as a concept, or "educators" as a class, does not establish that the work of one teacher produces benefits that are national in scope. *NYSDOT* at 217, n.3. A local-scale contribution to an overall national effort does not meet the *NYSDOT* threshold. The aggregate national effect from thousands of teachers does not give national scope to the work of each individual teacher.

Counsel continues:

> The national priority goal of closing the achievement gaps between minority and nonminority students, and between disadvantaged and more advantaged children is especially relevant in the context of and The 2012 MSA [Maryland School Assessment] Reading results show that out of the 24 Maryland school districts ranked near the bottom at the 'All Student' level for each MSA-covered grade level . . . .

The petitioner worked for from 2008 – 2011, and thus had been there for a number of years before the administration of the 2012 MSA tests. Counsel fails to explain how the 2012 MSA results for (which indicate low rankings relative to other Maryland school districts) establish that the petitioner has played an effective role in "closing the achievement gap."

Counsel asserts that the petitioner "is an effective teacher in raising student achievement in STEM," but he cited no documentary evidence to support the claim. As previously discussed, the unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. In addition, while counsel asserts that the petitioner has "proven success in raising proficiency of her

students," he did not point to specific STEM test results or other documentary evidence in the record to support the assertion. Regardless, there is no documentation demonstrating that the petitioner's work has had an impact or influence outside of

Counsel asserts that the "director erred in his appreciation of petitioner's past achievement," but counsel fails to point to evidence in the record showing that the petitioner's specific work has had a national impact or has otherwise influenced the field as a whole.

Counsel states that factors such as "the 'Privacy Act' protecting private individuals" make it "impossible" to compare the petitioner with other qualified workers and that USCIS "should have presented its own comparable worker." The *NYSDOT* guidelines, however, do not require an item-by-item comparison of the petitioner's credentials with those of qualified United States workers. The key provision is that the petitioner must establish a record of influence on the field as a whole. Moreover, there is no provision in the statute, regulations, or *NYSDOT* requiring the director to specifically identify another equally qualified school teacher. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

Counsel contends that "the Immigration Service is requiring more from the beneficiary's credentials [ ] tantamount to having exceptional ability," but an individual is not required to qualify as an alien of exceptional ability in order to receive the national interest waiver. As previously discussed, the requirements for exceptional ability are separate from the threshold for the national interest waiver. It remains that the petitioner's evidence does not establish eligibility for the national interest waiver. The director did not require the petitioner to establish exceptional ability in her field. Instead, the director observed that the petitioner's evidence does not show that the petitioner's work has had an influence beyond the school system that employed her.

Counsel asserts that the director's decision failed to adequately address the arguments pertaining to the petitioner's "eligibility for waiver of labor certification" that were submitted in response to the director's RFE. In his letter responding to the director's RFE, counsel emphasized "the critical timeline" and "time-sensitive obligation" for hiring "Highly Qualified STEM teachers,'" and claimed that the labor certification process cannot accommodate this need because "[t]he United States Department of Labor minimum education requirement . . . for Secondary Science teacher is just a bachelor's degree." Counsel further stated: "Doing a labor certification process for the Self-Petitioner, faithful to the Foreign Labor Certification regulations, i.e., require only a bachelor's degree, would not meet the objective of the employer to hire highly qualified teachers pursuant to No Child Left Behind (NCLB) Law."

Section 9101(23) of the NCLBA, 20 U.S.C. § 7801(23), defines the term "highly qualified" in reference to teachers. Sections 9101(23)(B) and (C) of the NCLBA require that a "highly qualified" teacher "holds at least a bachelor's degree." Section 9101(23)(B) of the NCLBA also refers to "highly qualified" teachers who are "new to the profession." Thus, the petitioner's "equivalent Master's degree" and almost "20 years of experience" are not required for "highly qualified" status

under the NCLBA. In addition, the petitioner has not established that the "highly qualified" standard involves requirements that are significantly more stringent than those for school teachers outlined in the U.S. Department of Labor's *Occupational Outlook Handbook*, or that a public school could not obtain a labor certification for a "Highly Qualified Teacher." Counsel, therefore, does not support his assertion that the labor certification process frustrates the NCLBA's mandate for schools to employ "highly qualified teachers."

Counsel's response to the director's RFE further stated that "unquantifiable factors that zero in on 'passion'" distinguish the petitioner from qualified United States workers and that labor certification cannot take these factors into account, but the record contains no evidence to support the claims. In addition, counsel contended that, under the NCLBA, schools that fail to meet specified standards will lose federal funding and be "abolished," thereby putting teachers out of work. Counsel, however, offers no specific examples of school closures and teacher layoffs attributable to not meeting NCLBA standards. Again, the unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena* at 534 n.2; *Matter of Laureano* at 3 n.2; *Matter of Ramirez-Sanchez* at 506. Counsel further contended that by waiving the labor certification requirement for highly qualified teachers such as the petitioner, "more American teachers will have . . . employment opportunities" because standards will be met and schools will not be abolished. However, there are no blanket waivers for highly qualified foreign teachers. Again, USCIS grants national interest waivers on a case-by-case basis, rather than establishing blanket waivers for entire fields of specialization. *NYSDOT* at 217.

Counsel's response to the director's RFE also stated that another teacher received a national interest waiver, and asked that the present petition "be treated in the same light." Each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). While AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished service center decisions are not similarly binding. *See* 8 C.F.R. § 103.3(c). Furthermore, counsel provided no evidence to establish that the facts of the instant petition are similar to those in the unpublished decision. Without such evidence, the assertion that both cases merit the same outcome is unwarranted. The only stated similarity is that the beneficiary of the approved petition was "also a teacher in ,"

Counsel asserts in the appellate brief that while the NCLBA "requirements set minimum standards for entry into teaching of core academic subjects, they have not driven strong improvements in . . . the effectiveness of teachers in raising student achievement." However, assertions regarding the need for educational reform in the United States only address the "substantial intrinsic merit" prong of *NYSDOT*'s national interest test. In addition, counsel quotes a study that concluded the "Teach For America" program "rarely had a positive impact on reading achievement." The record, however, does not include a copy of the study. Once again, the unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena* at 534 n.2; *Matter of Laureano* at 3 n.2; *Matter of Ramirez-Sanchez* at 506. Regardless, counsel does not show that the petitioner's individual teaching

efforts, after several years in the United States, have set her apart from other educators with regard to raising student achievement in or nationally.

A plain reading of the statute indicates that engaging in a profession (such as teaching) does not presumptively exempt such professionals from the requirement of a job offer based on national interest. The petitioner has not established that her past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that her influence be national in scope. *NYSDOT* at 217, n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole."). On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende* at 128. Here, that burden has not been met.

ORDER: The appeal is dismissed.